PRIVILEGED AND CONFIDENTIAL DRAFT 5/25/88

PHILIP MORRIS' RESPONSE TO RICHARD DAYNARD AND HIS TOBACCO PRODUCTS LIABILITY PROJECT PRESS CONFERENCES

Tobacco, like alcohol, has always had its critics. Now that the Cipollone case is over, Philip Morris welcomes the opportunity to respond to the latest round of critical publicity generated by Richard Daynard, Director of the Tobacco Products Liability Project (TPLP). The purpose of TPLP is to help plaintiff's lawyers working on a ~~fee contingent~~ contingent fee basis to win product liability lawsuits against the tobacco industry.

On March 26, 1988, while the Cipollone case was in progress, Mr. Daynard held a press conference where he distributed selected copies of parts of documents introduced into evidence in the Cipollone case. Mr. Daynard also handed out a TPLP press release which, according to Mr. Daynard, proved tobacco industry was guilty of conspiracies and cover-ups regarding its actions on the issues of smoking and health. Regrettably, the Cipollone trial judge, Judge H. Lee Sarokin, chose to repeat some of these criticisms in his opinion of April 21, again while the trial was still in progress.

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In Philip Morris' view, it was inappropriate both for Mr. Daynard and Judge Sarokin to have publicized their hostile views on the Cipollone trial documents while the jury was sitting on that case. Now that the trial is over, the company takes this opportunity to comment on the evidence on which Mr. Daynard says he relies and which Judge Sarokin chose to discuss. The present report demonstrates that Mr. Daynard's criticisms are unfounded.

I. INTRODUCTION AND SUMMARY

The charges publicized by Mr. Daynard and reflected in Judge Sarokin's April 21 opinion are demonstrably false. Philip Morris has acted as any responsible manufacturer would act when confronted by reports raising questions about the safety of its product. Mr. Daynard's selective presentation of documents is an unsuccessful attempt to rewrite history.

Two undebatable facts bear on every aspect of that history. First, millions of people throughout the world who are well informed of the possible health risks associated with smoking continue to choose to smoke. Second, cancer remains a mystery. Despite the billions of dollars which have been poured into research, no respected medical or scientific authority claims to have proven the basic causes of cancer.

Given these two facts, a responsible industry, upon become becoming aware of epidemiological and animal studies

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raising questions about the safety of cigarettes, would have taken the following steps. It would have supported research by independent scientists addressing the basic causes of cancer and more focused studies relating specifically to tobacco. It would also have undertaken a complete and detailed analysis of its products in an effort to identify and isolate smoke constituents that industry critics have asserted might be carcinogens. It would then have undertaken to reduce and possibly eliminate as many of those compounds as possible.

As discussed below, Philip Morris took each of these steps. Against that background, the papers from Philip Morris' files distributed and discussed by Mr. Daynard lack the sinister quality he attributes to them. Most particularly, the documents do not justify his charges that (1) the research funded by the industry through the Tobacco Industry Research Committee (TIRC) and the Council on Tobacco Research (CTR) was a "hoax" upon the American public; (2) Philip Morris suppressed research results proving that smoking causes cancer; and (3) Philip Morris and its competitors could have marketed a "noncarcinogenic" cigarette, but refused to do so.

In fact, the documents demonstrate unequivocally that (1) renowned, independent scientists decided what research should be conducted; (2) the research was carried out largely by independent scientists, was publicly reported and did not prove that smoking causes cancer; and (3) every

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respected scientific authority, including the Surgeon General, rejects the notion that the tobacco industry could have, but refused to, market a "noncarcinogenic" cigarette.

Finally, we shall discuss the documents relating to Philip Morris which Mr. Daynard considers incriminating. Whether viewed alone or in combination, those documents in fact demonstrate that Philip Morris has acted at all times as a responsible company concerned with the welfare of its customers.

II. PHILIP MORRIS HAS PROPERLY RESPONDED TO THE CONCERNS RAISED ABOUT THE ALLEGED HEALTH PROBLEMS ASSOCIATED WITH SMOKING

Mr. Daynard asserts that Philip Morris and the other tobacco companies have not acted responsibly in assessing and attempting to avoid the alleged health problems which have been associated with smoking. The facts are that Philip Morris, like others in the industry, has made intensive efforts to analyze those complex scientific issues.

No one knows what causes cancer; but if, as many critics of smoking believe, the offending agents reside somewhere in the "tar" produced by cigarette smoke, then the important point is that Philip Morris has succeeded in bringing to market products which have less than 10 percent of the "tar" of the average cigarette sold in the mid-1950s.

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A. The Initial Concern Over Lung Cancer And Smoking In The 1950s

Prior to the 1950s, there was little scientific evidence associating cigarette smoking with lung cancer. While there had been in prior years some popular perceptions of health risks due to smoking -- ranging from tuberculosis (a charge subsequently proven false) and "stunting one's growth" to viewing cigarettes as "cancer sticks" -- scientists did not attribute lung cancer to smoking.

The principal issue facing the cigarette companies in the 1940s stemmed from complaints by smokers that smoking was irritating their throats and nasal passages. The companies responded to this concern by adding humectants to their cigarettes and by then conducting tests which demonstrated that those improved cigarettes were less irritating to the throat and nasal passages. Lung cancer simply was not yet a significant scientific issue.

The situation confronting the tobacco industry began to change in the early 1950s with the publication of the first substantial epidemiological studies claiming a statistical association between cigarette smoking and lung cancer. Doll & Hill (1952); Wynder & Graham (1950). Those studies, like all epidemiological evidence, did not provide proof that cigarette smoking caused lung cancer. Rather, they only indicated a statistical association warranting further review in larger, better controlled epidemiological studies and, more importantly, in biological experiments.

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The first significant biological experiment involving the use of smoke condensate in mouse skin-painting was published by Dr. Ernst Wynder in 1953. In that experiment, Wynder and his colleagues painted the backs of mice with large amounts of condensate derived by collecting smoke from hundreds of cigarettes, solidifying it at extremely low temperatures and then mixing it with solvents such as acetone.

For several reasons, however, such skin-painting studies are not directly applicable to the human smoking experience, and any conclusions assertedly derived from such studies must be viewed with caution. First, the mice used in the experiments have been specially bred to be extremely sensitive to any possible carcinogenic activity, and they therefore react positively to many substances which are not carcinogenic in humans.

For example, in the late 1950s, Dr. Jonathan Hartwell of the National Cancer Institute compiled a list of animal carcinogen studies which included such common items as fructose (fruit sugar), glucose (processed sugar) and even lactic acid (made naturally by the human body) as animal "carcinogens." He found that 481 of the 2108 common chemical compounds tested (23 percent) were "carcinogens" in such animal studies. But, neither Dr. Hartwell nor any other responsible scientist ever concluded that these many "animal carcinogens" were, by extension, carcinogenic in humans.

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Second, the substance that is applied to the backs of the mice in such skin-painting experiments -- condensate created by solidifying tobacco smoke and mixing it with a chemical solvent -- is very different from the fresh, whole smoke that a smoker inhales. It was for that reason that Philip Morris and the other tobacco companies sponsored animal studies by independent scientists which more closely resemble the human smoking condition -- i.e., experiments in which animals inhale fresh, whole smoke. To this day, such studies have failed to find experimentally produced lung cancer in any of the thousands of laboratory animals subjected to fresh, whole smoke. ~~These studies are listed in Appendix [ ].~~

Third, the organ involved -- mouse skin -- is quite different from a human lung. Once again, all scientists recognize the importance of inhalation studies which would confirm, or has been the case, cast doubt on the skin-painting results.

Finally, the doses applied in mouse skin-painting are massively greater than the doses of the particulate matter which a smoker would encounter in a normal smoking situation. This again emphasizes the inability to predict human lung cancer based on such animal work.

Given these problems in extrapolation, the tobacco industry -- like other industries whose products have been found to be "carcinogenic" in animal experiments -- has understandably questioned claims that such studies "proved"

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that cigarette smoking causes lung cancer. Philip Morris and the other members of the industry, however, did not ignore the findings. To the contrary, they engaged in comprehensive research to assess the health criticisms of smoking.

Why we did m.s.p. - 2 reasons (1) to learn about them!

B. Independent Research Funded By Philip Morris And Other Members Of The Industry (2) to compare biological activity of condensate. It was the "only game in town."

One of the first things Philip Morris did was to join with others in the tobacco industry in 1954 -- less than a year after the Wynder study was published -- to establish and fund the Tobacco Industry Research Committee (TIRC, subsequently renamed the Council ~~on~~ for Tobacco Research or CTR). The principal purpose of TIRC/CTR was to provide funding for experiments by independent outside scientists into "smoking and health" issues, including concerns expressed over lung cancer. A subsidiary purpose of TIRC/CTR was to communicate to the public in a clear and appropriate fashion the scientific issues involved and how the industry was responding to the health concerns that had been raised. For these reasons, TIRC -- like all the prominent organizations on both sides of the smoking and health debate -- had a public relations staff.

The grantees of CTR were eminent scientists associated with universities and other prominent research organizations in no way beholden to the tobacco industry. (A list of some of the grantees and their published studies is attached as Appendix A.) Rather, they were independent investigators

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who developed their own proposals and submitted requests for funding to the Scientific Advisory Board (SAB) of CTR. That board was composed of distinguished scientists in various fields of expertise who likewise were entirely independent of the tobacco companies. The board was directed by Dr. Clarence Cook Little, one of the leading cancer researchers in the country. The board itself evaluated the research proposals and funded those they believed had merit. (The SAB members and their affiliations are listed in Appendix B.)

While some projects proposed to CTR were not funded because they were not deemed by the SAB to have sufficient scientific merit, Philip Morris is not aware of any instance in which a scientist was turned down for a CTR grant because funding was not available or because of interference from a tobacco company. At all times CTR acted as the independent funding agency it was intended to be.

The grantees, in turn, were free to publish their research results in scientific journals. Between 1954 and 1986, the SAB awarded 969 grants to 522 scientists who reported their research results in over 3,000 scientific papers, published in such prestigious journals as the Journal of The National Cancer Institute and the New England Journal of Medicine. Many of these grants were co-funded by such organizations as the American Cancer Society, the National Cancer Institute and the American Heart Association.

Philip Morris also joined with other industry members in contributing more than $25 million for other independent research into "smoking and health" issues at the following research facilities -- the Educational Research Fund of the

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American Medical Association (AMA/ERF) (cancer, heart disease, and respiratory problems -- published as a 1978 book entitled "Tobacco and Health"); Washington University in St. Louis (cancer immunology); and Harvard University (respiratory diseases). ~~Philip Morris itself funded studies by the American Health Foundation relating to improved filtration as well as the alleged relationship between smoking and cancer.~~ Philip Morris itself funded studies by a number of outstanding institutions such as the American Health Foundation and Kingston Laboratories.

Again, all of this research was conducted by independent grantees on unrestricted bases. They were the ones who made the research proposals; they were the ones who conducted the experiments; and they were the ones who published the results as they saw fit, including results which were relied upon by industry critics.

This work sponsored by the CTR grantees and the other outside scientists and funded in whole or in part by Philip Morris has been extensive. It has ranged from experiments specifically directed toward the possible adverse health consequences of tobacco use -- including skin-painting and numerous animal inhalation studies -- to more basic research into the possible mechanisms of cancer and other health problems.

Mr. Daynard has asserted that this research was merely a ruse unrelated to legitimate health concerns. But it was the independent scientists and the scholarly organizations with whom they were associated -- not the tobacco industry -- who determined the nature of the research. And it was

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the expert judgment of the SAB ~~those independent scientists and organizations~~ that the experiments and research were directly related to the health concerns raised about smoking. Mr. Daynard's charges assault the integrity of numerous distinguished scientists from the nation's most prestigious universities and research institutions.

C. "Safe" Cigarette Research

Mr. Daynard asserts that Philip Morris and other tobacco companies knew how to make a "noncarcinogenic" cigarette but refused to do so. This claim ignores the extensive, but unsuccessful, work of the federal government itself in a decade-long search for a "less hazardous" cigarette. That program was undertaken by the Tobacco Working Group (TWG) under the auspices of the National Cancer Institute (NCI) in 1968.

The purpose of the TWG was to provide scientific and technical assistance to the NCI in designing experiments with the goal of developing a "less hazardous cigarette." The TWG investigated numerous processes that influenced levels of smoke constituents, including the available bioassay systems for measuring the biological activity of different cigarettes; the available epidemiological data; the state of smoking machine technology; and the proper method for generating cigarette tars and fresh cigarette smoke for use in various experiments. More than 150 cigarette variables were eventually tested. There were

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experiments aimed at lowering the biological activity of cigarettes by changing the smoke composition, developing tobacco substitutes, experimenting with paper porosity and different methods of processing tobacco, and evaluating effects of tobacco treated with various chemical compounds.

The TWG experiments included mouse skin-painting, feeding study assays, pellet implantation experiments, and many other types of studies. The TWG also designed inhalation experiments that were carried out by the NCI. In all of this work, the TWG members were striving for a "less hazardous cigarette."

After more than a decade of work, the TWG was disbanded, ~~because the government concluded that development of a "less hazardous" cigarette was not possible.~~ The work of the TWG was subsequently reviewed by the Surgeon General in 1981 who issued his own report concluding "that the search for less hazardous cigarettes has not yielded a product which can be considered 'safe'." It should be noted that this 1981 conclusion covered Liggett's palladium-nitrate process, the centerpiece of the plaintiff's "safe" cigarette contention in the Cipollone case. That process had been publicly disclosed with great fanfare four years before the government concluded that no "safe" cigarette had been found.

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D. Philip Morris' Product-Modification Efforts

Philip Morris has also mounted its own research effort over the last three decades into possible ways it might change its products in response to concerns raised by outside scientists. The fact that this research effort included examination of "biological activity" does not mean that Philip Morris accepted tests such as mouse skin-painting as proof that smoking causes cancer. As discussed above, Philip Morris had good reason to be critical of the claim that, since smoke condensate painted in massive doses on the backs of mice will lead to tumors, it can be concluded that fresh whole smoke inhaled by humans in far lower quantities will lead to lung cancer. Nevertheless, Philip Morris undertook to modify its products, whenever possible, to provide lower levels of "biological activity" according to such tests.

Philip Morris centralized its research efforts in a new research center in 1952. The staff at the center grew from a few scientists in 1952 to more than 200 by the time of the first Surgeon General's Report in 1964. The center presently employs more than 600 scientists and support staff including biochemists, organic chemists, physicists, statisticians, toxicologists, ~~psychopharmacologists,~~ and analytical chemists.

These scientists work in more than 60 laboratories equipped with state-of-the-art instruments for the analysis and testing of the complex compounds found in any organic material such as tobacco. In many cases, the Philip Morris

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scientists had to invent their own specialized machines for such experimentation and analysis. For example, it was Philip Morris scientists who perfected the instrument that was used for many years by the Federal Trade Commission and other groups around the world for the measurement of tar and nicotine delivered by cigarettes. And it was Philip Morris that developed the machines used worldwide for conducting animal inhalation experiments.

Philip Morris has employed this extensive research staff in a concentrated effort to identify and, if possible, remove or reduce substances from tobacco smoke that critics have suggested might somehow be involved in lung cancer and other respiratory problems. Using increasingly sophisticated gas chromatographs and mass spectrography instruments (GC/MS), the Philip Morris research staff, together with other outside scientists, have succeeded in isolating and quantifying more and more of the chemical compounds in tobacco smoke. It should be emphasized that most of these compounds are present in such minute amounts -- often one-billionth of a gram per cigarette -- that they simply could not have been identified prior to the development of sophisticated GC/MS technology in the 1970s.

Philip Morris has spent millions of dollars on this smoke chemistry research. That effort has achieved some remarkable results.

First, and most importantly, Philip Morris, like the other tobacco companies, has constantly improved the filters

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used on its products to reduce the amount of Total Particulate Matter, or "tar," which a smoker inhales. As a result of this research, the amount of "tar", as well as nicotine, delivered to smokers has dropped significantly over the last 30 years. In 1955, an average cigarette delivered more than 37 milligrams of tar; by the time of the first Surgeon General's report in 1964, the industry had reduced that amount to 24 milligrams; by 1980, the figure was less than 15 milligrams; and today the average is even smaller. These reductions in overall tar and nicotine levels were achieved both by reducing the delivery levels of all existing cigarette brands and by introducing entirely new ultra-low tar brands that deliver as little as 1 or 2 milligrams of tar per cigarette -- a 95 percent reduction from the 1955 level.

Second, Philip Morris has also attempted to develop filters that will eliminate certain allegedly harmful substances. While it is difficult to eliminate particular compounds from the thousands of compounds mixed in cigarette smoke, there have been significant advancements.

For example, when health critics suggested that lung cancer might be related to a class of compounds known as phenols, Philip Morris and others in the industry developed a selective filter which eliminated phenols almost entirely.

Similarly, Philip Morris developed a product with an activated charcoal filter to trap and eliminate certain gases that have concerned some scientists. In various

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tests, cigarettes with such charcoal filters have been found to have less effect on respiratory functions than cigarettes with traditional acetate filters. A Philip Morris product incorporating that process, Multifilter, has been marketed since 1964; and Philip Morris has used charcoal in the filters on a number of its other brands as well.

Third, Philip Morris has developed a number of methods for diluting cigarette smoke with fresh air in order to reduce tar and nicotine delivery still further. First used in the late 1950's, this process has been developed from mere pin pricks in filter material to the present technology in which lasers make microscopic holes throughout the entire cigarette paper to allow more complete dilution.

Fourth, Philip Morris' scientists have assisted in the development and testing of new processes for the reconstitution of tobacco sheet from tobacco byproducts. In choosing among the various processes it might use, Philip Morris has evaluated the biological activity of reconstituted tobacco in the same type of mouse skin-painting studies used by the industry's critics. When Philip Morris determined that in some studies the tobacco reconstituted by one process appeared to produce somewhat less biological activity than both normal tobacco and tobacco reconstituted by other processes, Philip Morris adopted the process associated with the lowest biological activity.

Finally, Philip Morris has been innovative in the use of expanded tobacco -- tobacco which has been expanded by

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being "freeze dried." When used in cigarettes, this expanded tobacco again contributes to the reduction of tar delivered by each cigarette. Philip Morris disclosed its expansion process to the other companies in the industry and, as a result, many of their cigarettes also use the process to contribute to the overall reduction in TPM.

It should be emphasized that Philip Morris does not claim that these reduced tar and nicotine products are "safe" or "safer." Indeed, because of FTC requirements, no health claim could as a practical matter be made by a cigarette company (which disposes of Mr. Daynard's complaint that Philip Morris allegedly failed to promote the benefits of its new Multifilter). On the other hand, Philip Morris is required to state the amount of tar and nicotine present in each particular brand being advertised. And the consumer is thus free to make his or her own informed choice.

As with other research and scientific programs, Philip Morris has also spent millions of dollars pursuing theories that turned out to be fruitless. For example, researchers at Philip Morris (along with other outside scientists) understood as early as 1963 that one can reduce the biological activity of cigarette condensate as measured in mouse skin-painting tests by substantially increasing the level of nitrates in the tobacco filler. This can be done by selecting certain types of tobacco -- such as burley -- which have a higher level of natural nitrates or by adding various nitrate salts. Judged solely from the standpoint of

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mouse skin-painting, the addition of such nitrates appeared to be desirable.

The problem, however, was that work by other independent scientists found that chemical compounds known as nitrosamines, which are formed from such nitrates, are carcinogenic in animal lungs. In the words of one study cited by the Surgeon General, such nitrosamines were "regarded for practical purposes as if [they] were carcinogenic to humans." These scientists therefore called for the elimination of nitrosamines from cigarettes even though the addition of nitrates led to better results in skin-painting experiments. This example was not cited by Mr. Daynard in his recent charge that the cigarette companies could have produced "safe" cigarettes.

E. Philip Morris Did Not Suppress The Results Of This Research Effort

Mr. Daynard asserts that Philip Morris and the other tobacco companies, together with the independent scientists who worked on studies funded by the industry, engaged in a conspiracy to mislead Congress and the American people about the results of research conducted by those scientists. Mr. Daynard also claims that the tobacco industry was able to undercut or silence other scientists who had no connection to the industry, and were publishing studies indicting smoking on a regular basis from the 1950s to this day.

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As noted above, the scientists who received grants from CTR and other agencies such as AMA/ERF had complete freedom to publish their results.

Those CTR grantees in fact published hundreds of studies that had been funded by the tobacco industry. (Appendix A) The AMA/ERF study results were published in a book. Therefore, it can not be concluded that research adverse to the industry was not undertaken or the results not published.

Similarly, the scientists who worked at Philip Morris were encouraged to publish their research; and many of them did. While Philip Morris, like any other company, had procedures to ensure that potentially useful commercial secrets would not be disclosed prematurely, Philip Morris did not suppress the results of its internal research. Again, the sheer bulk of the published Philip Morris research does not support Mr. Daynard's claim that Philip Morris engaged in a "cover-up" of its internal research results.

For example, the two Philip Morris studies cited by Mr. Daynard concerning the motivations of people who smoke -- which Mr. Daynard asserts were "internal" documents showing smoking is "addictive" -- were, in fact, published shortly after they were prepared. If, as Mr. Daynard contends, these studies were so negative to Philip Morris' position, their publication only demonstrates the bona fides of Philip

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Morris' research program and its policy of publishing results whether or not they were favorable.

Finally, there is no merit in Mr. Daynard's contention that Philip Morris and the other tobacco companies used The Tobacco Institute and private public relations firms to suppress and mislead the public concerning research results.

The industry faced criticism at different times from the Surgeon General, Congressional Committees, the Federal Trade Commission, the Federal Communications Commission and other administrative agencies. The industry was also the subject of vocal attacks by public health groups and others determined to destroy the industry. Given the vast scope of the public attacks upon the industry, it is logical that the industry employed public relations specialists and supported The Tobacco Institute in an effort to present its side of the story.

And there was a legitimate story for the tobacco industry to tell Congress, the FTC and the public at large. For example, at the 1957 Blatnik hearings regarding possible false and misleading advertising, a number of eminent scholars testified that, in their opinions, it had not yet been established that cigarette smoking caused lung cancer. Similarly, in 1959, the editors of the Journal of the American Medical Association, while noting that there was evidence pointing to the fact that excessive cigarette smoking might be a causative factor in lung cancer,

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cautioned that all of the evidence was not yet in and scientists should therefore withhold a final determination.

In light of this history and the constant need to respond to attacks from both public and private sources, it would have been unprecedented for an industry composed of major corporations such as Philip Morris to fail to enlist the communications expertise of public relations firms. The alternative preferred by its some of its critics -- silence on the issues -- would deprive the industry of its free speech rights under the First Amendment, and would deny the American public the opportunity to hear divergent views on an important issue.

III. THE CIPPOLONE TRIAL DOCUMENTS DO NOT SUPPORT MR. DAYNARD'S CHARGES

Tens of thousands of Philip Morris research documents were made available to the plaintiffs in Cipollone. Mr. Daynard selected excerpts from a few to try to support his contention that Philip Morris knew of certain lethal dangers of smoking, but suppressed that fact from the public. When the actual documents are read, however, no basis for Mr. Daynard's allegations can be found.

That is because, when read in their entirety, the documents are consistent with Philip Morris' announced positions that (1) cigarette smoking has not been established as the cause of the various health problems cited by some scientists and (2) Philip Morris, together

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with others in the industry, was sincerely interested in investigating those concerns and in responding to them.

A. The Documents Do Not Support The Charge that Philip Morris Recognized Cigarette Smoking Was Dangerous

PX 600A

This is a two-page memorandum from Dr. Robert DuPuis, Philip Morris' First Research Director, to his superiors at Philip Morris, dated July 20, 1956. Dr. DuPuis outlined the possible advantages of ventilated cigarettes (cigarettes diluted with air through tiny holes in the paper) which might permit Philip Morris to respond to various "health charges which have been made against cigarette smoking."

Mr. Daynard quotes these possible benefits of ventilated cigarettes in full but deliberately omits the very next paragraph in which Dr. DuPuis recognized that these were only potential advantages and suggested a research study to determine whether they were in fact valid:

> "As you know, I have discussed with Dr. Paul Kotin and his associates at the USC Medical School the possibility of their determining in the laboratory by chemical and biological means whether any of the above advantages of ventilated cigarettes are provable." (Emphasis added.)

This memorandum is thus entirely consistent with Philip Morris' research efforts to try to pursue all potential modifications that might respond to some health concerns. As discussed above, Philip Morris in fact conducted such research and succeeded in increasing the degree of dilution

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in all of its products. As a result of this increased dilution, the total tar and nicotine content of cigarettes has been reduced since 1956 when this memorandum was issued.

Read in its entirety, PX 600A thus demonstrates that, as early as 1956, Philip Morris was sincerely interested in responding to the potential cancer hazard that was being cited by some scientists making "health charges...against cigarette smoking" and was prepared to commit substantial resources -- both within Philip Morris and with outside experts such as Dr. Kotin -- in an attempt to do so.

PX 605

This is the rough draft of an outline of a presentation by a member of Philip Morris' research department to its president's office on March 10, 1959. Mr. Daynard quotes a portion of one sentence indicating that "if a food and drug law were applied to cigarettes, certain constituents, like arsenic and other insecticides, and certain minor smoke constituents might have to be controlled."

However, nothing in the memorandum indicates a belief that these constituents posed any risk to human health in the amounts present in cigarettes. Indeed, in the prior sentence which Mr. Daynard omits, the author of the presentation explicitly noted that "as is the case with many foods, drugs, and cosmetics, certain minor constituents may be subject to criticism and technical service, including biological testing, might be necessary" if cigarettes were placed under the control of the FDA. (Emphasis added.) The

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author recognized that the presence of such minor constituents would not distinguish cigarettes from "many foods, drugs and cosmetics."

Nor was the presence of arsenic and insecticides in cigarettes kept secret, as Mr. Daynard suggests. The same year, an article published in Chemical Reviews, the official journal of the American Chemical Society, noted the presence of arsenic -- along with other inorganic elements found in virtually all plant material -- in cigarette smoke. Johnstone & Plimmer, "the Chemical Constituents of Tobacco and Tobacco Smoke," 59 Chemical Reviews 885,923 (1959).

The presence of arsenic in tobacco smoke likewise had been specifically addressed three years before the memorandum Mr. Daynard quotes, in The New England Journal of Medicine. That 1956 article noted that, while a smoker who consumes 2-1/2 packs of cigarettes per day might inhale 12.5 micrograms of arsenic, a person breathing the air in New York City would inhale between 100 and 400 micrograms per day -- 8 to 32 times as much. 1964 Surgeon General Report at 61. Commenting on this evidence, the Surgeon General concluded in 1964 that "it seems unlikely that the amount of arsenic derived even from unfiltered cigarettes is sufficient to present a health hazard." Id. at 62.

Mr. Daynard's suggestion that the presence of other pesticides in cigarette smoke was also a secret in 1959 is not true. The use of such pesticides was, and still is, regulated by the United States Department of Agriculture

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which specifically authorizes their use in tobacco. The presence of minute amounts of pesticide residue in cigarette smoke has been monitored since at least 1934. See Carey, F.P., et al., "Preparation of Samples for Determination of Arsenic," 6 Indus. Eng. Chem. Anal. Ed. 327-30 (1934); Mold, J.B., et al., "Isolation of TDE from Cigarette Smoke," 1 Tobacco Science 1-63 (1957). The 1959 Philip Morris memorandum commenting on such residues was therefore not a revelation.

PX 323

This is a memorandum form Philip Morris' Research Director to Philip Morris' President dated October 24, 1963 in which the Director attempted to outline the lines of attack that critics of the industry might use in the future. This was done in response to a request from the President of Philip Morris for such a review. There is no indication that the Research Director or anyone else at Philip Morris subscribed to any of those hypotheses or that any of those theories was news to the public. In fact, the reference cited in the memorandum as the source of such criticisms of smoking - a report by Consumers Union on "Smoking and the Public Health" -- indicate that these theories were already well publicized in the mass media.

Mr. Daynard omits the discussion about Philip Morris' efforts to respond to these hypothetical objections to cigarettes. Read in their entirety, these comments make it clear that Philip Morris was investigating all of these

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potential criticisms of its products and was attempting to respond with practical solutions that would eliminate such health concerns.

PX 410

Mr. Daynard states that in this "internal research report," Philip Morris' Research Director indicated that "at best the mouse [skin-painting] work may be indicative, but ... ultimately, chemical analysis of smoke should give the answer." Mr. Daynard suggests this "internal research report" was a further concession by Philip Morris of the validity of mouse skin-painting, and that Philip Morris kept this admission to itself.

This inaccurate use of the document does not take into account that the "internal research report" was in fact presented, only a few months later, as a speech to a public meeting of the American Cancer Society. Moreover, the entire quote, in contrast with Mr. Daynard's edited version, makes it clear that Philip Morris did not accept mouse skin-painting as a valid bioassay:

> "It would seem to me that at best the mouse work may be indicative, but the artificial conditions, lack of conformation and failure on some species leaves this attack open to serious doubt.
>
> ". . . Ultimately, chemical analysis of smoke should give the answer. Some of the chemical analyses, such as the reported presence of three, four benzo(a)pyrene in cigarette smoke, were carried on by means of questionable technique. It is not easy to isolate and make positive identification of one part in several millions of a component of a complex mixture like smoke, but no one has

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claimed that smoke analysis is easy."
(Underlined material omitted by Mr. Daynard.)

Thus, this document makes it clear that Philip Morris did not contradict its consistent criticism of mouse skin-painting as a technique for predicting human lung cancer. Moreover, consistent with Philip Morris' public position, the document stated that the company was attempting to analyze smoke in order to provide possible responses to the health concerns of some scientists.

PX 608 ✓

This is a presentation made by Dr. Wakeham, Philip Morris' Research Director, to a staff meeting in Philip Morris' New York office on November 15, 1961, outlining the criticisms of smoking that were being made by various scientists.

Mr. Daynard refers to a portion of the presentation listing various chemical compounds that had been identified in cigarette smoke and had also been identified as carcinogens in some animal tests. He then suggests that Philip Morris was accepting the fact that these animal carcinogens were carcinogenic in man and that Philip Morris was suppressing the fact that these compounds were present in minute amounts in cigarette smoke. Published literature demonstrates that Mr. Daynard is wrong on both charges.

Nothing in the memorandum indicates that Dr. Wakeham believed these animal carcinogens were carcinogenic in man. Pages of the document which Mr. Daynard omits, reflect Dr. Wakeham's recognition of "the problem of carcinogen

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identification" and his caution that "many factors need to be considered in studying carcinogenesis." In this regard, Dr. Wakeham cited a leading text on the biochemistry of cancer which recognized the invalidity of extrapolating carcinogenic results in animal studies to man:

> "The carcinogenic potency of an agent does not reside in the nature of the agent alone but is a function of the following factors:
>
> (a) the dosage, the nature of the vehicle, the mode and length of time of administration of the agent;
>
> (b) the strain, the species, the sex, and the age of the test animal;
>
> (c) the site of application, the presence of concomitant factors such as the level of essential dietary constituents, and the number of animals kept in a cage."
>
> J.P Greenstein, Biochemistry of Cancer.

Thus, Dr. Wakeham's presentation to the Philip Morris President's office was fully consistent with Philip Morris' public position concerning mouse skin-painting experiments: That it is invalid to conclude that smokers who inhale fresh whole smoke will contract lung cancer because tumors develop in mice whose backs are painted with massive doses of condensate distilled from smoke and mixed with other chemicals.

In another portion of the memorandum omitted by Mr. Daynard, Dr. Wakeham similarly cautioned that "one in five of all randomly performed chronic toxicity tests revealed the presence of a carcinogen" in such animal experimentation. In this regard, Dr. Wakeham cited the

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comprehensive survey of such animal studies published by the U.S. Public Health Service which makes that finding. Hartwell, Survey of Compounds Which Have Been Tested for Carcinogenic Activity (1951 & 1957 Supp.)

In fact, the positive results in such carcinogenic testing of the items listed by Dr. Wakeham in his memorandum were taken from that published Hartwell survey. The list in Dr. Wakeham's memorandum -- as in Hartwell -- thus includes such common items as fructose (fruit sugar), glucose (regular sugar), and lactic acid which the body secretes naturally. It is clear, however, that neither Dr. Hartwell nor Dr. Wakeham was suggesting that these common compounds are human carcinogens.

It was known in 1961 that cigarette smoke contained minute amounts of the 35 compounds listed by Dr. Wakeham in the memorandum. For example, in August 1959, a review in the official journal of the American Chemical Society listed virtually every one of these compounds as being present in cigarette smoke. Johnstone & Plimmer, "The Chemical Constituents of Tobacco and Tobacco Smoke," 59 Chemical Reviews 885 (1959). These facts do not support Mr. Daynard's charges of a cover-up.

Nor is there any merit in Mr. Daynard's suggestion that in this presentation Dr. Wakeham was making a "poignant plea" for additional research funds in the hopes that a "medically acceptable low-carcinogen cigarette may be possible," and that plea was rejected. Dr. Wakeham's report

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simply recommends a number of specific programs for eliminating the irritating factors in smoke, controlling nicotine levels, and reducing the general level of carcinogenic substances -- all of which Philip Morris pursued at a cost of far more than the $14 million budget proposed by Dr. Wakeham.

Once again, this document is entirely consistent with Philip Morris' policy of responding with time, staff, and money to all health concerns -- even those that proceed on on such premises as: because naturally-occurring fruit sugar has been found to be a carcinogen in one or more animal experiments, minute amounts of those sugars in cigarette smoke must be a cause of lung cancer in human smokers.

B. The Documents Do Not Support The Charge That Philip Morris Recognized Smoking Was Addictive And That Philip Morris Suppressed That "Fact"

PX 5150

This is a draft of a study by a Philip Morris psychologist into the experience of a number of people living in Greenfield, Iowa who stopped smoking as part of the promotional activities for a motion picture ("Cold Turkey") which had been made in their town. In the report, the psychologist reported on the results of a questionnaire

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completed by 282 people who claimed that they had made some effort to stop smoking during the filming of the movie.

The report indicated that 55 percent of the "would-be-quitters . . . succeeded in giving up smoking for at least a month. Eight months later, 28.3% of those who tried to quit were still nonsmokers . . . ." The report also noted that some of the people who stopped smoking "nibbled more nuts, gum and candy", reported minor nervous mannerisms; and gained an average of about five pounds. (By contrast, the report noted that there was no increase in alcohol consumption or in any pills or medicine associated with quitting.)

Mr. Daynard asserts that this "internal research report" demonstrates that smoking is "addictive" and that Philip Morris withheld this "fact" from the public. As it happens, this draft report was published only a few months later. It is in a compilation of "smoker psychology" articles in a book entitled Smoking Behavior: Motives and Incentives. That book, which was edited by another Philip Morris psychologist, not only contained the report cited by Mr. Daynard but also a number of other reports by outside psychologists concerning the many reasons people smoke.

Any serious student of smoking behavior was well aware of the book when it was published in 1972. Indeed, at the Cipollone trial, plaintiff's expert, Dr. Jaffe, conceded that he was well aware of the very "Cold Turkey" study that Mr. Daynard now suggests Philip Morris suppressed. The fact

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that Philip Morris supported the publication of this study again serves to demonstrate the bona fides of Philip Morris' research effort.

In fact, the study -- which has all of the limitations of any questionnaire directed at minor, subjective symptoms -- merely confirms what everyone has long known: that some people who quit smoking will experience minor discomfort and a slight increase in nervous mannerisms just as they would if they gave up any pleasure which had become a habit. But there is nothing in the study, or any other Philip Morris-sponsored research, to indicate smoking is an "addiction" that is impossible to break.

PX 5171

This is a presentation by a Philip Morris psychologist concerning the various hypotheses that have been used to explain the reasons people enjoy smoking. Mr. Daynard refers to this document as an "internal" Philip Morris research memo. In fact, even plaintiff's counsel in Cipollone conceded that this was not an "internal" research memo but, to the contrary, was a speech given by the Philip Morris scientist at a scientific conference in 1972.

Moreover, there is nothing remarkable in the comments contained in the presentation. In the portions cited by Mr. Daynard, the Philip Morris scientist suggests that one might consider a cigarette as a "storage unit" for a certain amount of nicotine and then discusses the hypothesis of some

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researchers that nicotine was the "primary incentive" for the continuation of smoking.

It is clear, however, from the other portions of the document that this "storage unit" analogy was not intended by the Philip Morris researcher to suggest that cigarette smoking was some type of drug addiction. To the contrary, the paper expressly cautions against any such misapprehension:

> "Lest anyone be made unduly apprehensive about this drug-like conceptualization of the cigarette, let me hasten to point out that there are many other vehicles of sought-after agents which dispense in dose units; wine is the vehicle and dispenser of alcohol, tea and coffee are the vehicles and dispensers of caffeine, matches dispense dose units of heat, and money is the storage container vehicle and dose-dispenser of many things."

Again, this document only demonstrates that Philip Morris was sincerely interested in learning as much as it possibly could about its product and that, to that end, it engaged in a substantial research effort -- the results of which were made public.

C. The Documents Do Not Support The Charge That The CTR Was A Public Relations "Front" Which Endeavored To Mislead The Public

Mr. Daynard charges that the CTR was a mere "front" created by an industry intent on misleading the public. As described above, Philip Morris and the other tobacco companies contributed more than $100 million to support more than 900 scientific studies undertaken by the independent researchers selected by CTR. As also noted above, those

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studies were neither secret nor consistently supportive of the positions taken by the tobacco industry. To the contrary, the published work of the CTR grantees frequently included findings which critics of smoking have cited in their attacks on the industry.

Mr. Daynard does not suggest that any study by a CTR grantee was scientifically flawed or that it did not represent the independent findings of the grantee. Rather, he simply asserts that some of this work was not "relevant" to the issues and that CTR, like any other organization involved in a vigorous public debate, necessarily became involved in public relations. Read in context, however, nothing in any of the documents cited by Mr. Daynard suggests that the work of the CTR grantees was not valid scientific inquiry conducted by independent researchers.

PX 337-351, PX 2005A

In his supplemental press release, Mr. Daynard attacks the tobacco industry for advertising the findings of certain studies in various medical journals and then commissioning "a series of exhaustive surveys of doctors' opinions and practices to see how well they were succeeding." He fails to note, however, that the advertisements he cites were published in the 1930s and 1940s, whereas the CTR poll he mentions was taken in 1959.

Indeed, the two sets of documents concern entirely different issues. The advertisements discuss the problem of throat and nasal irritation which was addressed by Philip

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Morris and the other tobacco companies in the 1930s and 1940s by the addition of humectants. That improvement reduced such subjective throat and nasal irritation in various studies; and Philip Morris, and the other manufacturers, were merely advising consumers and their doctors of that fact.

By contrast, the poll conducted by a consultant to CTR (PX 2005A) to determine the attitudes of doctors in the late 1950s concerned the far different issues of lung cancer and cardiovascular problems. It is hardly surprising that CTR, which was being drawn into the public debate over such issues in the late 1950s, would want to assess such concerns on the part of the medical community.

Nor does the poll indicate that doctors had been confused or misled by the throat irritation advertisements published many years before (or any other statements of the industry). According to the poll:

> "More physicians place reliance on information concerning smoking and disease from the American Cancer Society than from any other group. More than two-thirds of the physicians rated this source as a good one . . . . Almost three-fourths of the physicians feel that research conducted in laboratories of tobacco companies is a poor source and half feel that independent research supported by funds from the Tobacco Industry Research Committee is a poor source."

The point, of course, is not whether anti-smoking critics such as the American Cancer Society were, in fact, more reliable than the tobacco companies or CTR. The point is that the medical community was scrutinizing the

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statements and research of the tobacco companies and CTR far more critically than they were reviewing the pronouncements of the American Cancer Society and other anti-smoking forces.

PX 1205A, PX 1206

These documents concern the efforts of a CTR public relations consultant to persuade the American Society of Experimental Pathology to cancel a press conference which had been arranged for Dr. Freddy Homburger, a CTR grantee, at which Dr. Homburger intended to make the false charge that CTR was suppressing one of his studies in which he concluded that smoking had produced laryngeal cancer in one breed of hamster. Mr. Daynard cites the document to suggest that this research was in fact suppressed and that there was something improper in CTR's effort to dissuade ASEP from appearing to endorse Dr. Homburger's false charges by sponsoring the press conference.

Yet, during Dr. Homburger's testimony at the Cipollone trial, it was clearly brought out that (1) the finding of laryngeal cancer as a result of cigarette smoking in this unusual hamster species had already been published by another researcher; (2) Dr. Homburger himself had already published his findings in abstract form a month before the scheduled press conference; (3) Dr. Homburger was involved in a dispute with CTR over the release of that abstract simply because of scientific criticisms questioning the validity of those findings; (4) CTR, despite these

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misgivings, encouraged Dr. Homburger to publish his complete results; (5) Dr. Homburger again presented his findings at the public ASEP meeting; and (6) Dr. Homburger's entire paper was published two months later in the Journal of the National Cancer Institute.

This testimony demonstrates that there is no merit in either Dr. Homburger's original charges or in Mr. Daynard's restatement of them. Indeed, Mr. Daynard omits the portion of the memorandum by the CTR consultant indicating that all he did with regard to the scheduled press conference was to advise ASEP of these facts; that it was ASEP itself that decided to cancel the conference; and that it was the ASEP officials who independently concluded that Dr. Homburger was "an 'operator' . . . [who] was exceeding decency and courtesy" in his conduct toward CTR.

PX 1314

This is a 1965 memorandum written by a CTR staff member proposing that CTR engage independent consultants to conduct "research reviews" of the state of the "smoking and health" literature. Mr. Daynard cites two sentences from the memorandum in an effort to imply that the industry was not interested in legitimate scientific research.

First, Mr. Daynard refers to a comment that the growing public debate over smoking, and specifically the annual reports required by Congress concerning the alleged problems of smoking and health, would probably "draw governmental attacks on [CTR]." This prediction, however, hardly

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demonstrates that the author, or anyone else at CTR, believed that such attacks were justified. Rather, it is simply a recognition that CTR, like all other groups involved in the smoking and health controversy in 1965, could expect criticism from some quarter.

Second, Mr. Daynard refers to a comment that if such "research reviews" were prepared, specific references to CTR could be "eliminated or modified." It is unclear what the author intended by this brief, parenthetical comment. In fact, such "research reviews" were not undertaken by CTR and, therefore, the issue as to whether the CTR work would be specifically discussed was never addressed. But once again the important point is that there is nothing in the memorandum to suggest that the proposal to undertake such reviews was not a sincere effort to understand the state of the scientific literature.

PX 912

This is a memorandum from a CTR staff member to its scientific director concerning the public debate that was swirling around CTR shortly before the publication of the Surgeon General's first report on smoking and health. Not surprisingly, the document notes that CTR had become involved in that important public controversy.

Significantly, the document, in a passage omitted by Mr. Daynard, emphasizes that, in terms of "public relations", CTR reflected "great wisdom and sound judgment" in the selection of "both staff and SAB members" who were

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"real authorities in their chosen fields." The document thus simply confirms that the scientists and staff were persons of great integrity who could not reasonably be accused of acting in anything but a professional and independent manner.

PX 937, PX 940

These documents refer to a committee formed in 1974 by various tobacco executives, scientists and attorneys to review ongoing projects at both CTR and within the tobacco companies to determine whether there were additional studies that should be undertaken. Again, Mr. Daynard claims these documents demonstrate that the tobacco companies were attempting "to confuse the public by pretending that they were sponsoring objective research designed to find out whether smoking was dangerous, and that the research results to date were negative or inconclusive."

In fact, the documents simply indicate that the tobacco industry was concerned about possible "gaps in knowledge" regarding smoking and health issues. In that regard the industry was merely following a suggestion by a prior, joint committee of the American Medical Association, the National Cancer Institute, and the tobacco companies to review pending scientific research to determine whether additional studies should be undertaken. Once again, there is absolutely no indication in these documents, or in any other related material, that this industry committee was attempting to suppress further research.

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D. The Documents Do Not Support The Charge That Philip Morris Was Only Pretending To Do Significant Research And Actually Suppressed Research Results

PX 305

This is a memorandum concerning proposed objectives of Philip Morris' new research department written by Dr. Robert DuPuis in August 1952. Mr. Daynard selects one line of this memorandum noting that one of the objectives of the research department was "to determine the effect of smoke as an etiologic factor in carcinoma." Mr. Daynard asserts that this particular objective was given a "very low priority."

First, it should be noted that the objective in question was not given a "very low priority" but rather was assigned a rating of 2.5 on a scale in which 2 was an "important" objective and 3 was an objective which "can be postponed." The fact that Philip Morris and its research department articulated such an ambitious objective as attempting to assess the effect of cigarette smoking on cancer in August 1952 -- a year before the Wynder skin-painting study was published providing the first significant biological results suggesting that cigarette smoke condensate was tumorogenic -- underscores Philip Morris' concern over possible health hazards associated with smoking.

Second, this particular list of objectives was only a proposed research and development program by Philip Morris' new research director who had been on the job for about six months. As another portion of the document indicates, the

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proposal by Dr. DuPuis to other members of the research committee was only that -- a proposal to be discussed so that priorities could be assessed. In fact, as early as 1954, Philip Morris was heavily committed to basic research into the possible carcinogenic activity of cigarette smoke both independently and through the combined Tobacco Industry Research Committee.

Finally, Mr. Daynard's focus on the priority given to one of the research objectives concerning the broad issue of cigarette smoking and cancer ignores the fact that the memorandum contains many other more specific objectives related to such health concerns which Philip Morris intended to undertake -- and did undertake -- on an even higher priority basis. For example, one of the objectives given an "urgent" rating, was "to develop methods for determining important constituents of smoke" while another, which was also given an "urgent" rating, was "to develop means of selective adsorption and absorption of smoke constituents, including the use of filters." (Objectives A-2 and F-2.) Philip Morris, the Surgeon General, and every other knowledgeable researcher into the alleged carcinogenicity of cigarette smoke have all agreed that such smoke chemistry and filtration work is the first step in attacking any possible problem of cancer from cigarette smoking. As discussed above, Philip Morris promptly undertook such research with the result that the total levels of all of the

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constituents which might possibly be implicated in health problems such as cancer have been dramatically reduced.

PX 906, 932, 932B, 1321, 1327

These documents are cited by Mr. Daynard as demonstrating that Philip Morris and the other tobacco companies were attempting "to confuse the public by pretending that they were sponsoring objective research designed to find out whether smoking was dangerous, and that the research results to date were negative or inconclusive." (Press Release, p. 7.) The suggestion is that the research institutions involved were under the control of the tobacco industry and were thus manipulated into doing irrelevant research. None of these documents supports such a proposition. Rather, they substantiate the independence of the research institutions involved.

The first, a letter from Dr. Hartnett of TIRC responding to research suggestions from Mr. Cullman (PX 906), emphasized that the Scientific Advisory Board of the TIRC zealously guarded its independence. Even the passage cited by Mr. Daynard states: "The Board feels strongly that it is not working for the Tobacco Industry". (Emphasis in original.)

The same is true of the second document, a note from Dr. Wakeham to CTR's Dr. Hockett, setting out Dr. Wakeham's view of which research proposals "might have greatest benefit to the industry." (PX 932) Dr. Wakeham's note said that his suggestions could be used by Dr. Hockett "for what

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you think they might be worth and throw the paper away." The latter comment was not meant to emphasize secrecy or sensitivity to the document. Rather, Dr Wakeham was emphasizing the fact that he was only making suggestions that Dr. Hockett should feel free to ignore.

The same is also true of the three documents highlighted by Mr. Daynard relating to the AMA/ERF program. (PX 1321, 923B, 1327.) Mr. Daynard's implication that the American Medical Association was being dictated to by the tobacco industry and thereby deliberately doing irrelevant research as part of a joint effort with the tobacco industry to fool the public defies common sense.

PX 430, PX 2745

These documents purport to show the company's "successful efforts to suppress public awareness of [the company's] actual knowledge and awareness." (Press Release p. 10.) In fact, they show no such thing.

Mr. Daynard focuses on Mr. Bowling's Memorandum to Mr. Kibbee on the company's contributions to Sloan-Kettering (PX 430), which reports that some Sloan-Kettering officials had begun to subject "Wynder to more rigorous screening procedure before letting him speak in the name of the Institute." Mr. Daynard claims that this occurred because of the two annual gifts of $25,000 which the company made to the Institute in 1963 and 1964. The document, however, does not show that Philip Morris suppressed anything -- much less, its own "actual knowledge and awareness" that

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cigarette smoking caused cancer. Mr. Bowling's recommendation that the company continue to make health research contributions to Sloan-Kettering in order "to find answers to the vexing cancer problem" suggests the opposite -- that the company did not have the "knowledge" and "awareness" referred to by Mr. Daynard, but hoped that such knowledge would be gained by research.

Sloan-Kettering's decision to make sure that Dr. Wynder's public statements in the name of the Institute should be subjected to more rigorous screening reflects the Institute's own discomfort over the publicity he had generated. This may have reflected a view that Dr. Wynder's public statements went beyond the legitimate conclusions from the data (the document reports that the Institute's Director was unconvinced of a smoking-cancer link). Perhaps the kind of publicity involved violated some other policy of the Institute. Whatever the reason, that was between the Institute and Dr. Wynder. It is not logical that the most prestigious cancer research institution in the world would attempt to stifle its most prominent scientists to assure continuation of a $25,000 annual gift.

In his attempt to show suppression of information, Mr. Daynard relies on a March 24, 1981 memo from Mr. J. J. Morgan to Messrs. Hugh Cullman and James Bowling regarding a recommendation that was to be made to the Communications Committee of The Tobacco Institute (TI). (PX 2745). If approved, the recommendation was then to be submitted for

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consideration by the Executive Committee. The portion singled out by Mr. Daynard states, in substance, that institutional advertising should be undertaken to attack bad medical research and the researchers themselves, "where vulnerable." Read in context, the latter phrase refers to those who engaged in bad research. There is nothing sinister in attacking bad research and researchers who conduct it. In any event, the recommendations were not implemented. No such advertising campaign ever took place.

PX 1505

Finally, Mr. Daynard cites as "incriminating" a TI memo which simply lists the materials regularly being sent by TI to Congressman and Senators. (Supplement to Press Release.) What disturbs him is that, included among these publications, was one devoted to research reports on smoking and health. It is difficult to see how this could be "incriminating," unless Mr. Daynard simply objects to the TI presenting their position to elected representatives.

E. The Documents Do Not Support The Charge That Philip Morris Withheld A "Safe" Cigarette From The Market

PX 609-PX 610

These two memoranda concern various proposals investigated by Philip Morris in 1962 and 1963 in an attempt to develop a "medically acceptable" cigarette that would respond to some of the health concerns that had been raised. Mr. Daynard notes that each document mentions Philip Morris

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research into catalysts in the hopes of increasing oxidation and thereby reducing the formation of such polynuclear hydrocarbons as benzo(a)pyrene, which some critics had suggested might be responsible for the alleged carcinogenic nature of tobacco smoke. Mr. Daynard cites this research as support for his contention that Philip Morris, and other tobacco companies, were involved in a conspiracy to suppress information concerning such catalysts and to withhold a "safe" cigarette from the market.

Mr. Daynard appears to believe that the use of catalysts such as palladium was the panacea and that no one outside the industry was aware of their possible advantages. He is incorrect on both counts. The theories concerning the use of such catalysts were a matter of public record long before these memoranda were written. For example, in 1959 the Reader's Digest discussed the fact that the cigarette companies were experimenting with the use of such catalysts in the hope of increasing oxidation and reducing polynuclear hydrocarbons -- just as the Philip Morris memoranda indicated four years later.

There is likewise no merit in Mr. Daynard's contention that the use of such catalysts yields a "safe" cigarette. As described above, Philip Morris, like the other tobacco companies and many researchers outside the industry, had long known that it is possible to reduce the tumorogenic activity of cigarette smoke condensate as measured in mouse skin-painting experiments by the addition of nitrates alone

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or in combination with catalysts. Unfortunately, the same scientists have also known that the addition of nitrates will increase the amount of another set of chemical compounds, the nitrosamines, which have been implicated as possible agents in producing lung cancer in experimental animals. In fact, one of the memoranda quoted by Mr. Daynard contains an extensive discussion on the need to remove nitrosamines from cigarettes.

The fact of the matter is that since 1977, when Liggett publicly announced its palladium-nitrate process, no responsible scientist has ever suggested that such a catalyst yields a "safer" cigarette. Indeed, the advisory committee to the Surgeon General which prepared a report on "The Changing Cigarette" in 1981 did not believe that the palladium-nitrate process was even worth a footnote. To the contrary, the Advisory Committee concluded that nitrosamines, which would result from such a process, presented a serious problem.

PX 613

This is a presentation made by a member of the research center at Philip Morris to the Philip Morris Board of Directors in October 1964. A portion of the memorandum describes Philip Morris efforts to develop a "physiologically superior product" as judged by two criteria -- (a) less effect on the mucous flow resulting from the action of lung cilia and (b) less effect on respiratory dynamics such as breathing rate. The document notes that Philip Morris

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had successfully tested a charcoal filter product that was superior to unfiltered or cellulose filter cigarettes according to these two standards. The document also notes, however, that when the charcoal filter product was initially introduced as the "Saratoga" brand, the product did not have a taste acceptable to the public. Based on this, and the fact that Philip Morris never made any health claims for Saratoga, Mr. Daynard concludes that Philip Morris was involved in a cover-up which deprived the public of a significantly safer product. Mr. Daynard seems unaware that any such health claim by Philip Morris would have violated FTC regulations.

In any case, Mr. Daynard omits the very next paragraph of the document, which indicates that Philip Morris promptly undertook "strenuous efforts" to improve the taste of Saratoga and that those efforts "resulted in Philip Morris Multifilter which had good taste and good physiological performance and which was introduced into the market last spring [of 1964]." Mr. Daynard also fails to note that Multifilter is still on the market today. Finally, Mr. Daynard ignores the fact that the studies underlying the "physiological superiority" of a charcoal filter product were all published long ago. See e.g., Carson, et al., "Effects of Cigarette Smoke on Respiratory Function", 11 Arch. Environ. Health 635 (1965); Carson, et al., "Responses of Ciliated Epithelium to Irritants", 93 Am. Rev. of Respiratory Dis. 86 (1966).

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Source: https://www.industrydocuments.ucsf.edu/docs/gnpv0003

PX 617

This is an October 1967 memorandum from a Philip Morris researcher reporting on the results of a mouse skin-painting study comparing a cigarette using only burley tobacco as compared to cigarettes using other blends. The memorandum indicates that, in that one particular study, the smoke condensate from cigarettes containing only burley tobacco produced less biological activity than the condensate from the other cigarettes. Again, Mr. Daynard cites this memorandum in support of his claim that Philip Morris could have sold a non-carcinogenic cigarette but refused to do so.

The fact, however, is that an all-burley cigarette is not "safer" than other blends.

First, it should be emphasized that the particular skin-painting study cited in the October 1967 memorandum produced the anomalous result that the higher doses of the all-burley condensate gave a lower tumor incidence than the lower dose of the same condensate. This result illustrates that mouse skin-painting is at best an uncertain measure of biological activity and that only very broad generalizations can be made from the findings of such studies.

Moreover, it has long been known that burley tobacco has a much higher nitrate content than other tobaccos. This again raises the "nitrate dilemma" discussed above: While it may be true that the condensate from such high nitrate tobacco blends produce fewer tumors in the backs of mice, it is also true that such high nitrate tobaccos yield smoke

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that is higher in nitrosamines which, in turn, are considered by many scientists such as the Surgeon General to be carcinogenic.

Finally, the recommendation of the researcher that Philip Morris attempt to market such an all-burley cigarette was based on incomplete information about such a product. To date, no company in the world has marketed an all-burley product; consumers simply will not smoke them because of their extremely harsh taste.

PX 625A

This is a presentation by Philip Morris' Research Director to the Philip Morris Board of Directors in October 1973 which Mr. Daynard cites as further evidence of the supposed "safer cigarette" conspiracy. Specifically, Mr. Daynard notes that the Research Director commented that "the European tobacco industry has agreed that smoking is harmful"; that the European industry was trying to develop a "less hazardous" cigarette; that Philip Morris was likewise working "to be in a position to design a cigarette which will meet 'less hazardous' specifications if they are ever imposed on us and at the same time to make a product which is attractive to the smoker"; and that, as a result of this work, Philip Morris had a number of "such prototypes on its shelves with more to come in the future."

Mr. Daynard's attempt to force these comments into a conspiracy to suppress "less hazardous" cigarettes is not valid. First, the comment with respect to "the European

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mouse skin-painting experiments, but only because the reconstituted tobacco was much higher in nitrates. A discussion of nitrates has been presented and reiterated above. Once again, there is no substance to Mr. Daynard's claim that Philip Morris invented a "safe" cigarette but withheld it from the market.

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Source: https://www.industrydocuments.ucsf.edu/docs/gnpv0003

tobacco industry" having "agreed that cigarette smoking is harmful" is apparently a reference to a comment made in the early 1970s by the president of BAT which some observers misconstrued to be a general concession that smoking was harmful. That comment, to a BAT stockholders' meeting, was well-publicized at the time and hardly constitutes a concession that smoking causes the many diseases Mr. Daynard and others attribute to it.

Second, and more importantly, there is no merit in Mr. Daynard's suggestion that Philip Morris ever suppressed any such "less hazardous" cigarette. As described above, Philip Morris consistently implemented any changes in cigarette design it believed had any value based on various biological tests. In the course of that research, the Philip Morris scientists created literally thousands of experimental "prototypes" -- some of which were superior in terms of some of these biological tests. Neither Mr. Daynard nor the plaintiff lawyers he seeks to help have ever pointed to any alternative design that Philip Morris ever developed which was superior in terms of any of those health concerns and yet was not promptly introduced.

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This 1974 memorandum concerns "Project Better" cigarettes -- a name used by Philip Morris in its studies with experimental cigarettes using a much higher proportion of reconstituted tobacco. Once again, the condensate from such cigarettes did produce less biological activity in

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